

REMARKS

I. Rejections Under 35 U.S.C. §112, Second Paragraph

The Examiner has rejected Claims 1-30 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

The Examiner has requested clarification on how a film may be impregnated. The word "impregnated" means "to be filled, permeated, or saturated." See *Merriam-Webster OnLine Dictionary*, <http://www.m-w.com/cgi-bin/dictionary>, 2005-2006. Claims 1, 3, 6, 12, 15, 18, and 20 have been amended to clarify that the impregnated blackout film is impregnated (i.e. permeated) with filler particles. This feature was present in Figures 1-4, among other places in the Specification, and thus this amendment is supported by the Specification. The filler particles may comprise any of the following, so long as they are capable of providing light inhibition and thermal diminution: a dye; a combination of a metal component and a pigment; a combination of a metal component and a dye; or a combination of a metal component, a pigment, and a dye. See Specification, p.15:2-8. The Specification has similarly been amended to make the same clarification.

The Examiner has also requested clarification as to the how the impregnated blackout film is "adapted to" achieve light inhibition and thermal diminution. For clarification purposes, Claims 1, 12, 18, 22, 27, 29, and 30, as well as the Specification, have been amended to state that impregnated blackout film and the extruded impregnated blackout film are both impregnated with filler particles capable of providing light inhibition and thermal diminution. The structure of the film impregnated with the filler particles is what makes the blackout and thermal drapery fabric/lining capable of providing light inhibition and thermal diminution.

The Examiner has also requested clarification on whether the second fabric set forth in the last three lines of Claim 12 is claimed as part of the drapery fabric construction, or if the claim intends to recite only that the drapery fabric construction can be aligned with a second fabric. Claim 12 is directed to a blackout and thermal drapery *lining* that is meant to serve as a lining to a second fabric. Not only does the invention contemplate an embodiment wherein the blackout and thermal drapery may be used by itself, but the invention also contemplates an embodiment wherein the blackout and thermal drapery *lining* may be used in conjunction with a second fabric. See Specification, p.17:23-25. The lining may be coupled to any second fabric by either sewing or by an adhesive. See *id.*, p.18:4-12.

The Examiner has also requested clarification as to whether the acrylic latex is coated or coupled to the impregnated blackout film (see Claims 27 and 30) and the extruded impregnated blackout film (see Claim 29). Acrylic latex is known in the art to be a coating that may exist in foam form. See Leaderman et al. (U.S. Patent No. 5,741,582), see also Samowich (U.S. Patent No. 4,409,275); see also Ferziger et al. (U.S. Patent No. 4,677,016). While in foam form, the acrylic latex is "coated" onto the impregnated blackout film (see Claims 27 and 30) or the extruded impregnated blackout film (see Claim 29). The acrylic latex is then dried or heat cured. The word "coating" is therefore an accurate word to describe the application of the acrylic latex.

The Examiner has also requested clarification regarding the extruded impregnated blackout film of Claim 29. For purposes of clarification, the Specification and Claim 29 have been amended. The method comprises the steps of providing an extruded impregnated blackout film that is impregnated with filler particles capable of providing light inhibition and thermal diminution. An extruder machine is used to create the extruded impregnated blackout film first and then the extruded impregnated blackout film is coupled to the first side of a fabric. This feature was present in Figures 1 and 2 among other places in the Specification as amended above, and thus this amendment is supported by the Specification.

II. Rejections Based Upon Obviousness-type Double Patenting

The Examiner has provisionally rejected Claims 1-30 under the doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 3-9, 19-23, 25, 29, and 32-33 of copending Application No. 10/082,039.

The Applicant respectfully disagrees with the Examiner because this invention is patentably distinct from that claimed in copending Application No. 10/082,039. In this invention, the blackout film is impregnated with filler particles capable of light inhibition and thermal diminution. Preferably, an extruder machine is used to impregnate the blackout film with the filler particles (extruded impregnated blackout film). However, alternative methods of creating the impregnated blackout film may be used so long as the filler particles are impregnated into (as opposed to being coated on to) the blackout film. In copending Application No. 10/082,039, the blackout film is metalized with a coating of metal. As an example, aluminum paste would be coated onto the blackout film to metalize it. These applications are therefore patentably distinct.

III. Rejections Under 35 U.S.C. §102

The Examiner has rejected Claims 1, 7, 9-12, 15-17, 22, 24-27, and 29-30 under 35 U.S.C. § 102(b) as being anticipated by Samowich (U.S. Patent 4,409,275). The Examiner has also rejected

Claims 1-3, 9-11, 12, 15, 17, 22-24, 26, 27, and 29-30 as being anticipated by Leaderman (U.S. Patent No. 5,741,582). And Examiner has rejected Claims 1-5, 9, 12, 14-15, 17, 22-24, 26, 27, and 29-30 as being anticipated by Ferziger et al. (U.S. Patent No. 4,677,016). Applicant respectfully disagrees because none of these references teach each and every element claimed by the Applicant.

Samowich teaches a substrate, a layer of acrylic foam that is laminated on to the substrate, a layer of acrylic film that is then applied to the acrylic foam, and a decorative layer between the acrylic foam and the acrylic film. Applicant's invention discloses a fabric, an impregnated blackout film, and a layer of acrylic latex. The acrylic film of the Samowich invention is in no way the same as the impregnated blackout film of Applicant's invention. The impregnated blackout film of Applicant's invention is preferably made of a type of thermoplastic (not acrylic latex) and is impregnated with filler particles capable of providing light inhibition and thermal diminution. The Samowich invention makes no such mention of any impregnated blackout film or of any filler particles capable of providing light inhibition and thermal diminution. Instead, Samowich mentions that aluminum foil and vacuum aluminum, metalized polyester fabrics, and MYLAR film may be used as the substrates with the foam/film. Samowich's aluminum foiled/MYLAR

substrates would not be nearly as pleasing to the eye as the decorated fabrics of the present invention.

Furthermore, to decorate the Samowich invention, solid colors or designs may be printed upon the foam utilizing gravure or rotary offset. However, fast drying colors with minimum amount of plasticizers must be used to prevent migration of colors and a later undesirable separation of the film from the foam after bonding. See Samowich, col.4, lines 8-14. Therefore, the decoration of the Samowich invention is very limited. In contrast, the decoration of Applicant's invention is the fabric layer itself, not ink placed within the acrylic latex. Applicant's invention, therefore, is more cost effective and allows for more variety in the decoration, because the user is not limited to the complicated dying techniques claimed in Samowich.

Applicant notes that it is possible to use a decorative fabric as the substrate of the Samowich invention, but the decorative fabric substrate would replace the aluminum foil/MYLAR substrates, thereby doing away with any solar reflection properties that the aluminum foil/MYLAR substrate would otherwise have provided. Unlike Samowich, Applicant's invention provides light inhibition and thermal diminution without sacrificing any aesthetic qualities.

The Leaderman reference discloses a blackout drapery having two acrylic foam layers, one of which contains either carbon black or a darkening pigment. The adhesive layers form an inner portion of two outer fabric layers, which may be woven or non-woven textiles. Leaderman does not disclose any blackout film like that claimed by the Applicant. Instead, Leaderman relies on the old technology of pigmenting the acrylic foam in order to achieve blackout properties. Leaderman also does not disclose a thermal diminishing effect for the blackout drapery.

Applicant's invention, on the other hand, discloses an impregnated blackout film impregnated with filler particles capable of light inhibition AND thermal diminution. Leaderman makes no mention of any impregnated blackout film and Leaderman fails to teach the element of thermal diminution.

Similarly, the Ferziger et al. reference discloses a window shade having a woven fiberglass fabric substrate which is coated on at least one surface with at least three layers of foam acrylic latex, one of which contains grey or black pigment. Ferziger et al. does not disclose any blackout film like that claimed by the Applicant. Instead, Ferziger et al. relies on the old technology of pigmenting the acrylic foam in order to achieve blackout properties. Ferziger et al. also does not disclose a thermal diminishing effect for the blackout drapery. Applicant's invention, on the other hand, discloses an

impregnated blackout film impregnated with filler particles capable of light inhibition AND thermal diminution. Ferziger et al. makes no mention of any impregnated blackout film and Ferziger et al. fails to teach the element of thermal diminution.

Because the Samowich, Leaderman, and Ferziger et al. references fail to teach each and every aspect claimed by the Applicant, these rejections should be obviated.

IV. Rejections Under 35 U.S.C. §103

The Examiner has rejected Claim 6 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as being obvious over each of Samowich, Leaderman, and Ferziger et al. The Examiner has also rejected Claims 6 and 16 under 35 U.S.C. §103(a) as being unpatentable over Samowich. The Examiner has also rejected Claims 13, 18-21, and 28 under 35 U.S.C. §103(a) as being obvious over each of Samowich, Leaderman, and Ferziger et al.

In order for the combination of references cited by the Examiner, singly or in combination, to satisfy the obviousness requirement, the prior art references must suggest the desirability of the combination. The mere fact that the references may be combined or modified does not in itself render the resultant combination obvious. In re Mills, 916 F.2d 680

(Fed. Cir. 1990). Furthermore, the level of skill in the art cannot be relied upon to provide the suggestion to combine references. Al-Site Corp. v. VSI Int'l Inc., 174 F.3d 1308 (Fed. Cir. 1999).

Leaderman and Ferziger et al. both disclose draperies meant to black out the light. However, neither of these references suggests that their respective draperies contain impregnated black out film impregnated with filler particles capable of providing thermal diminution. These references disclose pigmented acrylic for blacking out the light, but make no suggestion of any blackout film impregnated with aluminum or any other metal component for providing thermal diminution.

Samowich also fails to make any suggestion of having an impregnated black out film impregnated with filler particles capable of providing thermal diminution coupled between a layer of fabric and acrylic latex. Samowich actually teaches away from this concept when it states that the side opposite the film, foam, substrate would be aluminized MYLAR. See Samowich, col. 2, lines 26-28. The aluminum substrate acts as the solar reflector, while the acrylic film/foam and decorative layer act as the insulator and room furnishing. See Samowich, col. 2, lines 59-63. Samowich teaches that the entire substrate will be aluminized like aluminum foil or MYLAR. Therefore, the aluminum substrate of the Samowich reference must face outside the

window, while its decorative side and its acrylic latex layers must face inward toward the room. If one were to face the aluminized substrate toward the inside of the room (to try to mimic Applicant's invention wherein the fabric faces toward the inside of the room), this would frustrate Samowich's intended purposes which is to use the aluminized substrate as a solar reflector.

Independent Claim 1 and dependent Claim 6 have been amended to clarify that the blackout and thermal drapery comprises, among other things, an impregnated blackout film impregnated with filler particles capable of light inhibition and thermal diminution. Samowich, Leaderman, or Feziger et al. each fail to disclose this key limitation. Independent Claim 1, as amended, is therefore neither anticipated by nor unpatentable over these references. And because Claim 6 is dependent upon amended Claim 1, Claim 6 is neither anticipated by nor unpatentable over these references.

Independent Claim 12 has been amended in similar fashion as Claim 1. For the same reasons, amended Claim 12 is not unpatentable over Samowich. And because Claim 16 is dependent upon amended Claim 12, Claim 16 is not unpatentable over Samowich.

Independent Claims 18 and 27 have been amended in similar fashion as Claims 1 and 12. As amended, these independent claims

and any of their dependent claims are not unpatentable over Samowich, Leaderman, and Ferziger.

V. Conclusion

Applicant respectfully submits that this Amendment, in view of the Remarks offered herein, is fully responsive to all aspects of the objections and rejections tendered by the Examiner in the Office Action. None of the cited prior art, nor any combination thereof, discloses a blackout and thermal drapery having a layer of fabric, an impregnated blackout film impregnated with filler particles capable of providing light inhibition and thermal diminution, and a layer of acrylic latex. For all of the foregoing reasons, the Applicant respectfully asserts that all claims are patentable over the cited prior art and respectfully requests that these claims be allowed.

The fee for a two-month extension is enclosed herewith. It is not believed that this Amendment Letter requires any additional fees, but if there are, please deduct them from our Deposit Account NO. 23-0830.

Respectfully submitted,



Veronica-Adele R. Cao
Reg. No. 52,694
(480) 994-8888

Weiss, Moy & Harris, P.C.
4204 N. Brown Ave.
Scottsdale, AZ 85251-3914